ALBERTA LAW REFORM INSTITUTE

Edmonton, Alberta

ANNUAL REPORT

1988-1989

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ALBERTA LAW REFORM INSTITUTE

EDMONTON, ALBERTA

ANNUAL REPORT

1 April 1988 - 31 March 1989

JAMES WILLIAM BEAMES Q.C.
Director 1979-1986
Chairman 1986-1988

Jim Beames died on August 12th, 1988. He had been Chairman of the Board of Directors of the Institute since March, 1986.

Mr. Beames had held almost every post of significance in the legal profession in Alberta. He was President of the Law Society of Alberta, and President of the Alberta Branch of the Canadian Bar Association. In addition, he chaired several important committees dealing with Continuing Legal Education, Specialisation,the Judiciary, and Judges Salaries.

As well as legal matters, Jim was heavily involved in the community through activities such as the Red Deer chamber of Commerce, as a member of the University of Alberta Senate, Secretary of the Citadel Theatre, and as President of the Central Alberta Alumni Association.

While Jim early demonstrated his competence in a number of fields of legal practice, it was in practice before regulatory tribunals that he principally made his name. From 1958 to 1975, he appeared as counsel for his own city, Red Deer, in all major gas and electric utility regulation hearings in the province. After he had moved his practice to Edmonton, he represented major utility companies before the Public Utilities Board

and the Energy Resources Conservation Board. As his reputation spread, he became involved in proceedings before the National Energy Board and the Canadian Transport Commission, as well as before other provincial and territorial regulatory bodies such as the Yukon Territories Water Board and the Saskatchewan Power Commission.

Mr. Beames association with the Institute began with his appointment to the Board as a member at large in 1979 and he was associated with several major projects, including Proposals for a new Business Corporations Act(1980), Judicial Review of Administrative Action(1984), Status of Children(1985), Trade Secrets(1986), and Prejudgment Remedies(1988).

The election as Chairman of the Board was a recognition of his interest in the Law Reform process and his ability to motivate both staff and Directors. His thoroughness, incisiveness and decisiveness were evident to all who came in contact with him and were a source of inspiration to those who worked with him.

The Institute is stronger for the time it shared with Jim Beames. His unique qualities will be sadly but very affectionately missed.

SUMMARY OF YEAR'S ACTIVITIES

During the reporting year in question, the Institute has had the opportunity to effect a number of changes in its operations. The purpose of these changes has been to ensure that the Institute's work and its reports are of the most direct benefit to the public, and are both topical and capable of being put into legislative action. In the previous reporting year, and to some extent in the year before that, the Institute's major objective was to bring to completion some rather long standing projects. Such projects demand a great commitment of resources, a long attention span from both the Institute and the legal community, and tend to dominate the mix of activities with which the Institute is involved.

The Institute issued three reports in the reporting year. Two were final reports and the third was a substantial research paper.

In July 1987, the Institute issued Issues Paper No. 1, Towards a New Arbitration Act for Alberta. This report attracted considerable response and was a basis for substantial ongoing consultations with a broad representation of those groups interested in the arbitration area. Under the guidance of W.H. Hurlburt, Q.C., these consultations and further research were distilled into a final report which was issued in October of 1988: *Report No. 51: Proposals for a New Alberta Arbitration Act*. Not only does this report set out the principles for the revision of the Act, but it collects and compares the provisions of several different regimes and sets out a draft statute, along with comprehensive annotation and explanation suitable for immediate enactment in Alberta.

A second final report is our *Report No. 52 entitled Competence and Human Reproduction*. This report is a final report to our Report for Discussion No. 6, Sterilization Decisions, Minors and Mentally Incompetent Adults. Again, in reaching a final report, substantial consultation took place with affected community groups and representatives of various parts of the legal profession. This report had initially been interrupted by the decision of the Supreme Court of Canada in *Re Eve*, and there was concern that sufficient consultation take place to enable all groups to be aware of the effects of that particular decision. Some modifications to our original proposals were

made in order to ensure that the finished recommendations and the accompanying draft statute and amendments were clearly in turn with the policies which were being recommended. The report provides a draft statute suitable for enactment.

In February of 1989 the Institute issued a substantial research paper on the topic of corporate directors' liability. This report was issued as a research paper so as to give the profession and interested parties the benefit of the review of developments in several jurisdictions. Apart from the text, the bibliography alone will be a valuable tool to anybody researching in this area.

One of the very large projects with which the Institute has dealt with over the last several years is a review of creditor-debtor law in Alberta. One part of this area, prejudgment remedies, was dealt with in a final report issued in February of 1988. Report for Discussion No. 3, Remedies of Unsecured Creditors was issued in May of 1986. The Board of Directors has worked steadily and on an almost monthly basis to complete the review of this area. The breadth of the study can be seen by the following list of areas which are under review:

1. Foundations
    a. Principles of Reform governing the Project
    b. The Writ of Enforcement
2. Enforcement by Seizure and Analogous Processes
    a. Enforcement against chattels real (tangible chattels)
    b. Enforcement against interests in land
    c. Enforcement against negotiable instruments
    d. Enforcement against shares
    e. Enforcement against chattel securities
    f. Enforcement against intellectual property
    g. General process
3. Enforcement by Garnishment
4. Enforcement by Receivership
5. Exemptions from Enforcement
6. Distribution of Enforcement Proceeds
7. Locating the Debtor's Assets

8. The Sheriff

A substantial portion of these areas has now gone through committee and Board review and we are hopeful that a final report will be distributed in early fall.

Two other long standing projects have almost been brought to conclusion. In October of 1987 we issued an issues paper dealing with the law relating to cohabitation outside marriage. This had earlier been the subject of a technical survey which had reviewed the attitudes of people within Alberta. In the first half of 1988 we carried out extensive consultation with the profession and with those boards and tribunals which were concerned with cohabitation issues. As a result of those consultations and using the expert assistance of Professor Christine Davies, the Board has finalized the policy issues which it wishes to recommend in this area. The final product will be reviewed very early in the next reporting year and a final report will be issued shortly thereafter.

Section 42 of the Business Corporations Act, and the question of financial assistance by a corporation, has not only provoked some difficulty in commercial practice, but it has also been a difficult one for the Institute to review. The subject matter is particularly troublesome because of the somewhat polarized views which various persons may take of it. We had earlier issued a Report for Discussion, No. 5, in this area and gone to pains to consult as widely as possible with members of the profession and with representatives of the commercial community. While the Board reached a preliminary policy decision in April of 1988, it was decided that further research was necessary in order to review this policy against the background of remedies available to creditors under the Business Corporations Act, and under the fraudulent preferences and fraudulent conveyances legislation. As a result, considerable further research was necessary before this policy could be finalized. That has now been done and the policy confirmed in February of 1989. A final report will therefore issue early in the summer of 1989.

As a result of the Institute's proposal for a New Alberta Incorporated Associations Act, Report No. 49, the government introduced Bill 54, a bill dealing with volunteer incorporations. That legislation was allowed to die on the order paper and

subsequently a task force to consider the implementation of this legislation was established by the Minister of Consumer and Corporate Affairs. This task force has studied the area and met with groups across the province in a wide ranging and comprehensive review of volunteer incorporations. The Institute has provided whatever assistance the task force has requested in its review of the area. We have been able to explain the background to some of the proposals and to provide both information and research on some of the suggestions which the task force has entertained.

The change of Directorship on April 1, 1988 has had an impact on two other projects. Professor Lown was working on a proposals dealing with the operation of a securities depository system. The assumption of significant administrative duties has slowed the rate of progress on this topic. However, the preparatory work is complete and awaits the results of deliberations now being carried out by provincial Securities Commissions. Professor Hammond has attempted to carry out further work on a mortgage remedies project from his new position in New Zealand, but distance, and new duties, have made that task difficult.

Two other projects have moved along substantially in the year under review. One of the longest standing projects of the Institute is the Land Titles project. Not only is this project of huge proportions, but since it is intended that the proposals be as uniform as possible in other provinces, the research for the work has been carried on in consultation with representatives from various other provinces. Logistical difficulties had caused this project to move rather slowly but during the year in question a concerted effort was made to attempt to move this project along. Consultative meetings with various provinces were held in Edmonton in November and again in Vancouver in March. Substantial progress has been made towards the conclusion of the policy for revision of this area and it appears that this project is now firmly back on track.

Our Limitations project was the subject of a report for discussion in September of 1986. Again the concern has been to ensure that the proposals which we put out for discussion have been the subject of thorough and broad review. This particular project has now seen a commitment of substantial resources of the Institute and we expect it to be completed within the next year.

There was a significant cumulative change in Institute operations during the reporting year in question. The year began with the assumption of duties by the chief executive officer of the Institute when Professor Peter J. Lown assumed his position as Director on April 1, 1988. There were subsequent changes in the Board of Directors due to the unfortunate death of the Board Chairman Jim Beames, and to the subsequent resignation of Professor Chris Levy, the University of Calgary nominee. A change in counsel staff also took place due to the resignation of Richard Bauman who took up a full-time position with the Faculty of Law at the University of Alberta and due to the fact that we had not completely replaced the positions which were the subject of previous resignations. Two new appointments took effect in October and December of 1988 when Mrs. Janice Henderson-Lypkie and Ms. Christina Gauk joined our counsel staff.

With new faces, and new approaches, it was not unreasonable for the Board of Directors to take the opportunity to review some of its activities. Much of this culminated in a planning retreat which was held in Red Deer in September of 1988. Background papers were prepared for discussion and two and a half days of thorough and critical review produced a plan of action for the Institute over the longer term. Significant decisions were made with respect to the projects which the Institute would consider for the next two to three years. In addition, a structure was put in place to allow the selection of projects to take place in a more orderly, planned and managed way. Further management plans were approved for the distribution and appearance of Institute publications and for the manner in which the Institute might keep its profile and its activities before the profession and the public.

Arising from the retreat was a recommitment of Institute interest in the area of administration of justice and dispute resolution. The Institute recognizes the necessity for the involvement of a number of interest groups, including the courts, the government and the profession, in a review of fundamental issues such as these. The Institute continues to explore ways in which the appropriate groups might be brought together and find manageable topics which will provide a convenient forum for improvements in our current methods of dispute resolution.

The computerization of the Institute's activities has been almost completed. All of the Institute's documentation is prepared and completed in house. Each counsel operates on a computer work station and the three major support staff work stations are equipped with laser printing facilities. All of the production of reports, background documents and distribution system are now handled in house. This has resulted in significant changes in the quality of the finished product, and in the ease with which it can be distributed. It has also contributed to a significant improvement in the ease with which documents can be considered by and presented to both committees and the Board of Directors. Of course, this has represented a significant change in day to day operations and counsel and staff alike have accepted the challenge and met it in stride. The only areas which remain to be completed in present planning are the completion of a local area network joining all members of staff and the setting up of enhanced facilities for the considerable electronic searching which is carried out as part of our research.

The Institute welcomed two new members of the Board of Directors. In September Professor Eugene Dais joined the Board as the representative of the Faculty of Law at the University of Calgary. Professor Dais is a long standing member of that faculty and has considerable teaching experience and knowledge of the Alberta legal scene. In December the Law Society of Alberta appointed as its representative to the Institute Mr. Alan Hunter, Q.C. At that time, Mr. Hunter was the President of the Law Society of Alberta, his term concluding in January of 1989. In March of 1989 the Board of Directors unanimously elected Mr. Hunter as the new Chairman of the Board.

Two permanent legal staff were added in 1988. Ms. Janice Henderson-Lypkie joined the Institute in October. Ms. Henderson-Lypkie had previously practised with the Edmonton firm of Emery Jamieson, having graduated from the University of Alberta Faculty of Law in 1981. Ms. Henderson-Lypkie's experience in commercial litigation and in research has already allowed her to make a significant contribution to our activity. Ms. Christina Gauk joined our staff in December of 1988. Ms. Gauk was just completing her Ph.D. from University of Cambridge, and after articling with the Department of the Attorney General had carried on a private consulting practice for a number of years. Ms. Gauk's academic qualifications and her broad range of experience will be an asset to the Institute.

NEW CHAIRMAN

In March of 1989, the Board of Directors of the Institute unanimously elected as its new Chairman Mr. Alan D. Hunter, Q.C.

Mr. Hunter received his law degree from the University of British Columbia and in the summer of 1961 commenced articles in Calgary with his principal, the late D.C. Prowse, Q.C. Mr. Hunter remained with that firm for ten years until 1971 when he and Bill Code founded the firm of Code Hunter.

Mr. Hunter has been extremely active in the Law Society of Alberta, having been a Bencher of the Society for seven years, chairing most of the significant committees of the Society, and serving as President of the Society in 1988.

Mr. Hunter is a Law Society nominee to the Board of Directors and brings to the position of Chairman a wealth of experience in the courts of this province and the Supreme Court of Canada.

THE ALBERTA LAW REFORM INSTITUTE

In 1968, the Attorney General of Alberta, the Governors of the University of Alberta, and the Law Society of Alberta established the Institute of Law Research and Reform for a period of five years. They did so by an agreement dated November 15, 1967. They have continued the Institute by successive quinquennial renewals of the agreement, the last of which was entered into on March 31, 1988. By unanimous agreement, the new name "Alberta Law Reform Institute" was adopted, effective April 27, 1989.

The Institute's governing body is its Board. The three founding bodies appoint members to that Board. Those members co-opt additional members to the Board. Together with the Governors of the University of Alberta, such members appoint the Institute's Director, who serves as its chief executive officer. The Faculty of Law of the University of Calgary appoints one Board member.

Funding for the Institute comes from three sources. The University of Alberta provides the Institute with office premises and many additional services. It also makes a fixed annual grant to the Institute. The second source is the Attorney General, who provides approximately 40% of the balance of the Institute's agreed budget. The third and largest source of funding is the Alberta Law Foundation, which provides approximately 60% of the balance of the Institute's agreed funding.

The Alberta Law Foundation is established by the Legal Profession Act and receives interest on lawyers' mixed trust accounts. One of the statutory purposes to which the money is put is conducting research into and recommending reform of the law and the administration of justice. The Law Foundation grants are made to the Institute for those purposes. The Foundation began to make grants to the Institute on a project basis in 1973, and since 1977 it has made grants towards the Institute's core funding.

The Institute believes that the Foundation, through its grants to the Institute as well as in other ways, has made an important contribution to the public life of Alberta. The Institute is grateful to the Foundation for its continued support, and for the critical

review of activities provided by the Foundation Chairman, Mr. Philip North, Q.C. and its Executive Director, Mr. Owen Snider.

The Institute works in close liaison with, although it is independent of, the Attorney General's Department. It has enjoyed cordial relations with the present Attorney, The Honourable Kenneth L. Rostad, Q.C. and his Deputy, Mr. D.W. Perras, Q.C. The Institute greatly appreciates the support and encouragement of the Department and its endeavour to move the Institute's work products into legislative form.

The Institute has also had, over the last several years, a close working relationship with the Department of Consumer and Corporate Affairs. The Institute was responsible for the evolution of the Alberta Business Corporations Act and certain other reports in the area of commercial and consumer law. That Department and its Minister (now the Honourable Dennis L. Anderson) have also given support and encouragement to the work of the Institute. The Institute is grateful.

The Institute has a permanent staff of ten persons, including six Counsel. Outside experts and consultants are also retained from time to time. The Institute has an arrangement with the University of Alberta Law Faculty under which a senior Faculty member is seconded for periods of up to two years at a time to work on Institute projects in areas where that Faculty member has particular expertise.

PROJECT SELECTION

The Institute is, as noted, founded under a joint venture agreement to achieve certain stated objectives. It has no statutory basis, and is therefore able, within the bounds of the stated objectives, to choose its own law reform program.

No project is undertaken without the specific approval of the Board of Directors, after due deliberation as to the objectives of that project, the resource implications of assuming it, the likelihood of its producing distinct and worthwhile changes in the law, and any other relevant matters. The Board has a standing committee entitled the Project Selection Committee, with representation from the Board and from permanent staff. Before a project is recommended to the Board for adoption, it will have been reviewed by this Committee on the basis of a project description prepared by a staff member to whom preliminary review of the topic has been assigned. This description will outline the nature of the research involved, review activities in other relevant jurisdictions, set out the appropriate methodology by which the research can be carried out, and identify interested and affected parties. By carrying out such a preliminary but thorough review, any unnecessary overlap with the activities of other law reform commissions should be avoided, and the nature of the project and the research involved will be clearly known to the Board at the time of approval.

The initial impetus for a law reform project undertaken by the Institute can come from one of several sources. First, the Institute has undertaken much of its work at the suggestion of the Attorney General and other government departments. Statutes such as the Matrimonial Property Act and the Alberta Business Corporations Act were evolved with the overt encouragement of government. It is essential that a law reform agency be truly "independent" and the Institute's Board makes its own decision as to whether the Institute can and should take on a project. On some occasions projects suggested by government departments have not been taken on for one reason or another. On the whole, however, there has been a solid level of cooperation at an informal level between government departments and the Institute.

A second source of suggestions for law reform projects is the legal profession. Members of the Bar or members of the judiciary regularly make suggestions as to matters which ought to be addressed. The formal bodies connected with the Bar -- the Law Society and the Canadian Bar Association -- also from time to time raise suggestions with the Institute.

The Institute endeavours to maintain regular contact with members of the Legislature by sending copies of Reports and Annual Reports to all members of the Legislature and the Cabinet. From time to time suggestions are received from all political parties.

It is open to any member of the public to suggest something which ought to be addressed as a law reform project, and from time to time, though less frequently, suggestions are received.

The Institute maintains standing files on all suggestions received for law reform projects. The Project Selection Committee regularly reviews these suggestions and periodically canvasses the community for suggested topics. It also conducts planning reviews of these suggestions as projects are completed and opportunities to take on new law reform work present themselves.

It follows that the Institute has not ever had a distinct "programmatic" approach to the selection of law reform projects. It has tended to be pragmatic and to select projects which are thought to raise contemporary and compelling concerns of a relatively discrete nature and where it is thought that the application of the Institute's resources will result in something workable, which will likely gain the acceptance of the Legislature. Inevitably, however, selection of projects has tended to reflect the concerns of the particular period. For instance at one point the Institute was heavily involved in an overhaul of family law in the province; subsequently a number of the commercial law statutes were considered. More recently a sense of concern with respect to the administration of justice, delays in the courts, costs and so forth has begun to emerge. The Institute, in short, in project selection tends to be a mirror of concerns being felt in the real world.

The Institute invites any person, through the office of the Director, to suggest topics for law reform projects in the province.

The Institute is very much aware of the importance of cooperative law reform ventures, particularly in an age of tight resources. To that end, it cooperates with other law reform agencies in Canada, and the Uniform Law Conference of Canada in various forms of joint projects. The Institute is interested in advancing further the cause of cooperation in law reform ventures in Canada. There is a standing invitation to any law reform agency to propose to it cooperation with respect to a particular venture.

WORKING METHODOLOGY

At the time of adoption of a project by the Board, the recommendations of the Project Selection Committee will have identified the parameters of that project, the working methodology which is to be adopted with respect to the project, the likely work output, the resource costs of the project, and the socio-political climate which may lead to adoption of the proposals evolved.

The Institute publishes four kinds of documents. First, sometimes it publishes pure research papers. These are papers where, for one reason or another, in the course of a project, it is thought necessary to do some pure research (whether of a doctrinal or empirical variety) and it is thought useful to disseminate the results of that work for the benefit of other researchers or the legal profession.

A second document is what the Institute terms an Issues Paper. A document of this variety is usually issued in the early stages of a project. It will outline the nature of the problem which the Institute is considering, broadly what the present law is, and suggest the sorts of issues which the Institute thinks may need to be addressed, and possibly advance some tentative proposals. A document of this character is intended to be very much a preliminary and consultative one and to enable Institute staff and the Board to check whether the Institute has, in the eyes of knowledgeable observers, correctly perceived the problems arising and the sorts of things which need to be

addressed. An Issues Paper is not distributed in every project; it entirely depends upon the parameters and circumstances of the particular project.

A third kind of document published by the Institute is a Report for Discussion. This corresponds to what, in some law reform agencies, are called Working Papers. This is a much fuller document than an Issues Paper. It usually outlines with much greater precision the existing law, the issues, the solutions or directions the Institute is proposing, and frequently carries the matter to the stage of draft legislation. The purpose of such a document is again consultative. It is to allow both professional and public input on the Institute's proposals before a Final Report is made.

A fourth category is the Final Report. As a matter of convention, although it is not a requirement, the Institute "reports" through the Department of the Attorney General, to the Attorney General. A Final Report is the position taken by the Institute after all due deliberation, and almost invariably includes suggested legislation.

All four categories of documents are widely distributed. Approximately 2,500 copies are printed. Distribution is broadly as follows: all government departments, all members of the Legislature and Cabinet, all members of the Judiciary (all ranks), all legal firms in the province, all law libraries in the province, all law reform agencies in the British Commonwealth, a large number of other selected Canadian depositories, and approximately 400 law libraries in the western world. It is open to any individual member of the profession to request that that person's name be put on the Institute's mailing list. Copies are distributed free of charge.

Each report contains an Executive Summary, and copies of this Executive Summary are mailed to each individual member of the practising bar in the province, and to those individuals whose interest has been identified during the course of the project. As many as 7,000 copies of the Executive Summary may be distributed.

BOARD OF THE INSTITUTE

Two vacancies in the Board occurred during the year, the first due to the unfortunate death of Mr. Jim Beames, Q.C. and the second due to the resignation of Professor Levy. The Law Society nominee to the Board was settled in November and Mr. Alan Hunter, Q.C. joined the Board in November of 1988. The nominee of the Faculty of Law at the University of Calgary was Professor Eugene Dais who commenced his membership on the Board with his attendance at the planning retreat in September.

In March of 1989, the Board of Directors unanimously elected Mr. Alan Hunter, Q.C. as its Chairman.

Between August of 1988 and March of 1989, Mr. A.C.L. Sims, who was Vice-Chairman of the Board, took over the position of Acting Chairman. The Institute was fortunate to have such an able and efficient person to assume these duties prior to the appointment of the new Chairman. Mr. Sims oversaw both the transition to the new Director and the holding of a Planning Retreat, as well as other areas of financial planning. The Institute extends its sincere gratitude to Mr. Sims for this additional and very worthy effort.

LEGAL STAFF

Mr. R.W. Bauman announced his intention to resign from the Counsel staff in order to take up a full-time position with the Faculty of Law at the University of Alberta. Mr. Bauman had worked on the Limitations project, and continued to assist in the completion of the research paper on Corporate Directors' Liability.

Two new Counsel were retained in 1988. Ms. Janice Henderson-Lypkie joined the Institute in October of 1988. She has an LL.B. from the University of Alberta and had practised with the Edmonton firm of Emery Jamieson. In December Ms. Christina Gauk joined the Counsel staff. She had just completed her Ph.D. from the University of Cambridge and had carried on a private legal consulting practice for a number of years.

SECRETARIAL STAFF

Mrs. Carole Worock continued to act as Administrator to the Institute. Mrs. Shirley Ewmett was secretary to the Director. Cheryl Robinson was a secretary. Marlene Welton continued to assist in the front office and as a part time librarian.

Notwithstanding the continued computerization of the Institute's operations and the provision of micro-processors for all Institute counsel, the duties of secretarial staff continue to be onerous, and involve a large volume of technical typing, report formatting and associated work. This work was diligently and cheerfully discharged. The Institute is grateful.

SUMMER STUDENTS

Ms. Denise Perret, Ms. Vivian Stevenson and Ms. Teresa Solleveld were employed as research assistants during the summer of 1988. The Institute appreciates the evident quality of the research produced by its summer students and the freshness and enthusiasm which they bring to their work.

FINAL REPORTS

Proposals for a New Alberta Arbitration Act (Report No. 51, October 1988)

This report proposes that a new Arbitration Act be substituted for the Arbitration Act (Alberta). Part III contains the draft Act.

The draft Act would apply whenever parties agree to arbitrate. It would apply, unless excluded, to arbitrations under other statutes except labour and international commercial arbitrations.

The draft Act is patterned after the UNCITRAL Model Law of 1985 which, slightly modified, applies to international arbitrations in Alberta, but the International Commercial Arbitration Act (Alberta). The domestic draft differs in several significant respects to make it more suitable to arbitrations in Alberta and fit better with Alberta law, practice and terminology.

The proposals are intended to

- recognize party control
- ensure fairness
- strengthen the arbitration system
- make the arbitration system more efficient.

They are not intended to make radical changes in the arbitration system, but to rationalize and strengthen the system.

The draft Act would

- require fundamental fairness in arbitrations
- recognize the right of parties to manage arbitrations by agreement
- give arbitrators additional powers
  - to apply rules of equity
  - to make orders like injunctions and specific performance
  - to deal with parties who do not comply with the rules
  - to dismiss an arbitration for want of prosecution
  - to provide a set of procedures to govern service, including substitutional service
  - to give directions for conduct of arbitrations
  - to compel the giving of evidence
- require parties to raise objections to jurisdictions and arbitrators promptly
- require arbitrators, in the absence of an agreement, to decide according to law, and to give reasons for decisions.

The need for court intervention is recognised both to facilitate arbitrations and to ensure fairness.

The Court of Queen's Bench would have power to

- appoint an arbitrator when the agreed process fails

- stays a court action to allow an arbitration to proceed (A stay would be required unless the circumstances set out in the Act exist.)
- make preservation orders and enforce arbitrators' procedural orders
- decide upon questions of jurisdiction, including granting declarations of fundamental defects in arbitration agreements and arbitrations
- remove arbitrators in specified circumstances
- rule on a preliminary question of law brought with the consent of an arbitral tribunal
- set aside arbitral awards for reasons specified in the draft Act (e.g., a fundamental defect in the agreement to arbitrate, the reference to arbitration or the appointment of the tribunal, bias, serious procedural wrongs, or errors in law)
- allow an arbitral award to be enforced in the same manner as a Court judgment, or to give judgment in an action on an award.

Competence and Human Reproduction (Report No. 52, February 1989)

The Need for New Legislation

In October of 1986, the Supreme Court of Canada declared in its judgment in the Case of *Re Eve* that there is no authority at common law for anyone to consent to a "non-therapeutic" sterilization for a person who is not legally competent to consent personally. This effectively has stopped all such sterilization of minors or mentally incompetent adults; they can not give the consent themselves and the Supreme Court has ruled that parents, guardians or the courts can no longer consent on their behalf. Specific legislation would be required to create a consent mechanism, the court said.

Before this landmark judgment was handed down, the Institute had already begun a review of the law related to the sterilization of minors and mentally incompetent adults. The view was widely held that more protection in law was needed, not only to prevent un-warranted sterilization but also to ensure that sterilization decisions are made in the best interests of the subject.

The Institute incorporated its response to the *Eve* judgment in its *Report for Discussion No. 6* (March 1988). After extensive consultation it has prepared draft legislation, in the form of a new *Competence and Human Reproduction Act* and an amendment to the *Dependent Adults Act*.

History

The repeal in 1972 of the Sexual Sterilization Act, enacted in 1928 to permit sterilizations for eugenic purposes, ended a dark chapter in the history of the mentally disabled in Alberta. Drafted to protect the gene pool with no consideration of individual rights, this Act had allowed sterilization of mentally disabled persons without their consent. This discredited legislation has contributed greatly to the political sensitivity of this issue; no one wants a return to what amounted to forced sterilization. Research shows that the Act was disproportionately applied to those from poor, native or ethnic backgrounds.

After 1972, sterilizations on mentally disabled children were performed on the consent of a guardian, usually a parent. After 1978 (the year the Dependent Adults Act came into force) sterilizations on mentally disabled adults were performed with either the consent of a guardian or on order of the Surrogate Court.

With *Eve*, the ground rules have completely changed. Concern about the potential for unwarranted sterilization of vulnerable individuals has been replaced by concern about a situation in which those not competent to legally give their consent are barred from access to this form of birth control or menstrual management.

The message "we will not let you risk having babies" of the eugenic sterilization days had changed to the message "we insist that you risk having babies."

Case History

The Institute considered a number of case histories and chose two to illustrate the consequences of the judgment in *Eve* on the lives of affected individuals.

Case #1: Marie is a mentally handicapped woman in her mid-20s, with good verbal and motor skills but poor comprehension, living in the community in a stable relationship with Joe who is also mentally handicapped. The couple met when they were younger and living in the same institution.

They have one child who is normal and healthy, whom they are able to raise with the help of house support and parent counselling. Marie had a difficult pregnancy and does not want to have any more children. Other forms of birth control have been rejected as impractical or medically inadvisable, and Marie is strongly in favour of sterilization by tubal ligation.

Because the procedure would be non-therapeutic, her guardian would not have authority to consent, and since *Eve*, neither would the courts. Unlike other women wishing to prevent conception, Marie must run the risk of future pregnancy and its effects which are, for her, adverse.

Case #2: Janice is a 14-year-old girl with multiple handicaps. Mentally, she functions at the level of a child of five. Because of her physical disability, any rotation or movement of her hips brings pain. Janice is also afflicted with a medical condition which causes much more frequent and heavier menstruation than normal. Because of her hip problem, every pad change is an agony.

Janice is unlikely ever to bear children. Her mother and physician agree that a hysterectomy is the best course to spare her the distress associated with menstrual hygiene. However, in *Eve*, the Supreme Court calls hysterectomy "excessive" for menstrual management. Because the doctor is not sure that the hysterectomy would be therapeutic in the sense of the *Eve* judgment, he has refused to accept the consent of the mother to perform the sterilization.

The Institute's Position

In preparing its draft legislation, the Institute sought to create a decision-making process for those not legally competent to make the decision themselves, replacing the blanket prohibition of *Eve* with legislation which allows for a judgment based on the best interests of the individual and an empathy for her situation.

It considered the views of those who believe that no sterilization should ever be carried out, balanced against the fact that in the general population, sterilization has become the most popular form of birth control. With the exception of hysterectomy for menstrual management, which is major surgery, improvements in surgical techniques have made sterilization relatively simple, with few complications.

Nevertheless, sterilization should be regarded as permanent and the Institute agrees with the Supreme Court of Canada that it is "*not* a decision to be lightly undertaken" and that "the great privilege of giving birth" and the "basic human right of procreation" is involved.

After searching deliberation, the Institute has concluded that no person should be denied access to sterilization because she is not competent to consent. As it does in other areas, the law must provide a means of making the decision for her, based strictly on her best interests and on consideration of her individual circumstances.

The Legislation

Under the draft *Competence and Human Reproduction Act*, a judge of the Court of Queen's Bench may, on application made by or on behalf of the person, make an order authorizing an elective sterilization or a hysterectomy for menstrual management where the subject is either a minor or an adult who is not competent to consent to the proposed sterilization. Where a judge finds an adult subject of an application is competent to consent to a proposed sterilization, the judge may make an order allowing her to consent to the procedure.

Definitions

The Act creates three categories of sterilization: sterilization for necessary medical treatment; elective sterilization; and hysterectomy for menstrual management. Sterilization for necessary medical treatment (performed for the protection of the physical health of the person to be sterilized) is excluded from the Act and will not need a court order.

In the case of elective sterilization and hysterectomy for menstrual management, the new legislation provides a process that did not exist before to allow these decisions to be made on the facts and circumstances of each individual case.

Procedural Protections

Before an application is heard, the judge will appoint a lawyer to provide independent representation. The lawyer will follow the instructions of the client to the extent that she is competent to give instructions, and represent her interests to the extent that she is not competent to give instructions.

Notice of the application will be given to the subject, her parents and/or guardians and other interested persons. During the course of the application any of these persons may appear to be heard by the judge. As well, the judge will consider the reports of a physician and a psychologist.

Wishes of the Subject

In deciding whether a sterilization would be in the best interests of the person concerned, the legislation directs the judge to consider the wishes and concerns of the person involved. The judge must ensure that she has been informed about factors relevant to the decision and assisted, to the full extent of her intellectual capacity, to participate in the decision.

What the Judge Must Consider

In the case of an elective sterilization, the judge is directed by the legislation to consider:

(a) the age of the person,
(b) the likelihood that the person will become competent to consent to the proposed sterilization,
(c) the physical capacity of the person to reproduce,
(d) the likelihood that the person will engage in sexual activity,
(e) the risks to the physical health of the person if the sterilization is or is not performed,
(f) the risks to the mental health of the person if the sterilization is or is not performed,
(g) the availability and medical advisability of alternative means of medical treatment or contraception,
(h) the previous experience, if any, of the person with alternative means of medical treatment or contraception,
(i) the likelihood that any child of the person would be born with a physical or mental disability and the likely effect of that disability on the ability of the person to cope,
(j) the ability of the person to care for a child at the time of the application and any likely changes in that ability,
(k) the likelihood that a child of the person could be cared for by some other person,
(l) the likely effect of foregoing the proposed sterilization on the ability of those who care for the person to provide required care,
(m) the likely effect of the proposed sterilization on the opportunities the person will have for satisfying human interaction,
(n) the religious beliefs, cultural and other values of the person,
(o) the wishes, concerns, religious beliefs, cultural and other values of the family or other interested person providing personal care insofar as they affect the interests of the person, and
(p) any other matter the judge considers relevant.

In the case of a hysterectomy for menstrual management, in addition to the factors above, the legislation directs the judge to consider:

(a) the availability and medical advisability of alternative means of menstrual management, and
(b) the previous experience, if any, of the person with alternative means of menstrual management.

RESEARCH PAPERS

Corporate Directors' Liability (Research Paper No. 17, February 1989)

The Institute has been asked by the Minister of Consumer and Corporate Affairs to review the laws, both in Alberta and in other jurisdictions, that require directors of business corporations to act with care, skill and diligence. The purpose of the review is to determine if the Alberta corporations scheme requires amendment.

Current Alberta Law

The current standard, as expressed by the Alberta Business Corporations Act, requires a director to "exercise the care, diligence and skill that a reasonably prudent person would exercise under the circumstances". This was enacted in 1980, following a recommendation by the Institute that the standard be raised beyond that set by common law. The common law standard as expressed in the *City Equitable* case, is that a director is not expected to exhibit "a greater degree of skill than may reasonably be expected from a person of his knowledge and experience."

There is some concern that the standards set in common law, and also the somewhat higher standards set in Canadian jurisdictions over the past two decades, may not reflect the reality that outside directors of large corporations are increasingly persons of professional status and skills. Directorships are no longer merely honorary positions. Should the law be changed to reflect this professional status, with the appropriate, and much higher, professional standard of care and skill?

Trends and Case Law in Other Jurisdictions

Until 1985, corporate directors faced similar personal liability throughout the common law world. In that year the Delaware Supreme Court, in the *Trans Union* case, introduced what appeared to be significantly higher standards of care and diligence. In that case, the 10 members of a board of directors were held personally liable for $23.5 million in damages paid to the shareholders of their company, following a cash-out

takeover deal. The court found the directors negligent when they approved a share price recommended by the company president, without reviewing any documentation and without making an effort to determine whether a higher price could have been obtained for the shareholders.

In some interpretations, this case and several others which followed it seemed to be part of a trend, with courts assuming an intrusive role in overseeing both the process by which business decisions are reached and also the merits of the decisions themselves. Other observers saw it as merely following the existing rule that courts should intervene only when directors fail to exercise reasonable business judgment.

Although there has been disagreement among observers about whether the *Trans Union* case in fact served to raise the common law standards, the case had an immediate effect on the corporate community. In particular, the insurance industry has taken the judgment as meaning the courts will adopt higher standards, and this will encourage disgruntled shareholders to sue.

Practical Consequences of Changed Standards

While *Trans Union* cannot take all the blame, directors' liability insurance rates have skyrocketed while coverage has been diminished. Although evidence of higher judicial standards has so far been limited to U.S. jurisdictions, the insurance industry calculates risk based on conditions affecting insurance claims throughout the continent. Increased liability may also create problems for corporations in attracting and holding directors, with some highly qualified persons being unwilling to accept the risk they may now see, for the relatively small fees usually offered for directorships. Those who are willing to serve may become much more conservative in business decisions. Both these consequences are bad for business.

Legislative Responses

There are several alternatives for legislative reform in this area:

- The standard can be lowered substantially, as in Indiana, where a director can now be found liable only where his action "constitutes wilful misconduct or recklessness."

- In Delaware and other states, the law now permits a corporation to change its constitution to protect its directors from certain types of liability.

- Although no jurisdiction has yet done so, a ceiling could be established for the amount of damages that can be awarded for managerial negligence.

Conclusion

It is clear from our review that it would be premature in Alberta to adopt any one of these choices without further study. The Alberta Law Reform Institute has several recommendations as a result of its initial review:

The Institute should continue to monitor judicial and legislative changes in this area, particularly any innovations made in Canadian jurisdictions.

There should be an inquiry into the availability and extent of D & O liability insurance for corporations formed in Alberta, based on consultation with members and clients of the insurance industry. The inquiry should cover the use of D & O insurance, its costs, frequency and amount of claims and the factors that influence substantial changes in terms and availability.

Finally, the Institute recommends that a separate study be conducted to assess the extent that, over the past decade, persons in Alberta may have become less willing to serve as directors of corporations. Research would include surveys of current, past and prospective directors and officers and would explore other factors, besides that of legal liability for managerial negligence, that affect the decision to stand for election to a corporate board.

SMALL PROJECTS

From time to time the Institute carries out smaller research components which do not find their way into final reports, but which have been provided to departments of the government. In this category, the Institute has provided briefs on the use of deemed trust provisions for the protection of employee wages to the Department of Labour, a memorandum on damage deposits and section 27 of the Landlord and Tenant Act to the Department of Consumer and Corporate Affairs and prepared a brief submitted to the Hyndman Commission on Future Health Care in Alberta.

WORK IN PROGRESS

Creditors' Remedies

This very large project has consumed the full time of two counsel and much of the Director's time during the year in question. The sub-committee of Messrs. Sims and Dalton has also worked diligently on this topic. At times the size of the project is daunting, while at others it is challenging. The final report will update some of the research which was done over the last five year period. Board consideration of the total project should be complete by early fall.

Land Titles

Under the guidance of Mr. Hurlburt, and with the consultancy of Professor Mapp, this project has moved along significantly. Meetings were held of representatives from various provinces in Edmonton in November and Vancouver in March. A further meeting to finalise agreement on policy is scheduled for Toronto in the early fall.

Securities - Electronic Clearances

This project was interrupted when Professor Lown took up his position as Director, but a report is now nearing completion. While the mechanics of providing for

the placing of securities in an electronic registry are comparatively simple, they go hand in hand with the necessity to regulate the operation of the clearing agency. The project, of necessity, has had to expand to provide a review of the studies carried out by Securities Commissions, especially the work spearheaded by the Ontario Securities Commission.

Financial Assistance to Corporations

A report for discussion was issued in 1988, and produced some very thoughtful,if somewhat polarised responses. The final report will be expanded to include a more general review of the rights of creditors under the Business Corporations Act.

Cohabitation Issues

This report is now substantially complete, due to the expert and diligent assistance of Professor Christine Davies. A final report should issue in June of 1989.

Referees

This project is substantially complete, under the guidance of Mr. Justice Cote. A report should be reviewed by the Board of Directors in May of 1989 and is expected to be issued shortly thereafter.

Limitations

The progress of this report was interrupted due to a number of staff changes and by the subsequent necessity to review in detail some decisions from the Supreme Court of Canada and Provincial Courts of Appeal. The project has now been identified as a priority project and substantial Institute resources committed to its completion. The subcommittee is working to a September 1989 deadline for Board review.

Mortgage Remedies

Professor Hammond had charge of this project and had progressed to the consultation stage at the time of his departure to New Zealand. Once the consultation report is complete, the work will be taken in house for completion.

Small Projects

Several small studies have been undertaken which will not assume the proportions of a full report but are both needed and topical. We have conducted questionnaires on the possible repeal of the Bulk Sales Act and are now analyzing the responses. A further review of the survival of an action by a spouse under the Matrimonial Property Act is in progress. So too, is the question of the splitting of Canada Pension Plan benefits, as a follow up to our report on the Division of Pension Benefits.

Decision Making for the Elderly

With the generous assistance of the Law Foundation we have arranged for the assistance of Professor Gerald Robertson to carry out a study in two phases. The first will review and propose the operation of Enduring Powers of Attorney and the second will attempt to expand that model to decisions other than financial planning. This is a two year project which will terminate in June of 1990.

PUBLICATIONS AND PRESENTATIONS

In addition to his heavy involvement in the completion of the arbitration report Mr. Hurlburt was responsible for the following publications: an article entitled Towards a Reformed Non-Profit Corporation Statute (1988) 7 Philothanthropist 17-28; and two case notes entitled Setting Aside Non-Labour Arbitration Awards for Errors of Law - Some Recent Decisions (1988) 26 Alta. Law Rev. 345-354, and Promissory of Estoppel in a Private Non-Labour Arbitration (1988) 26 Alta. Law Rev. 354-358.

Ms. M.A. Shone gave two presentations at international conferences: in Tokyo, Japan in April of 1988 where she presented a paper on "Civil Commitment of the Elderly: Is There a Case for Special Legislation", to the 6th World Conference of the International Society on Family Law. The second presentation was to the 14th International Congress on Law and Mental Health in Montreal in June of 1988 entitled An Introduction to Law, Mental Health and Multi-Culturalism. Ms. Shone is also quite active in the law and medicine area having given presentations to various groups including psychiatric residents, emergency room physicians and the Centre for Criminology.

Mr. Brian Burrows has taken charge of the creditor's rights project and coordinated its progress towards completion. He has also taught in the Faculty of Law, a course in creditor's rights in the 1988 winter term, and constitutional law in the 1988/89 academic year. He continues to serve as a member of the Law Society Civil Practice Advisory Committee. He is active in the Anglican Church as Chancellor of the Diocese of Edmonton and is a member of the Organization and Agenda Committee of General Synod.

Mr. Richard Bowes has also worked almost exclusively on the creditor's remedies project, after completion of the report, for which he had carriage, on Pre-judgment Remedies. He published a paper in the Creditor-Debtor Review entitled "When is a Mareva Injunction Not a Mareva Injunction?" (1988) 3 National Creditor/Debtor Review 49-52. Mr. Bowes has also coordinated the hiring and assignment of all our summer research assistants.

Professor Lown has taught two courses in the Faculty of Law, Corporations law in the 1988 spring term, Entertainment law in the 1989 spring term, and also has supervised communications studies students from the University of Calgary. Professor Lown published an article entitled Intellectual Property Rights: Access and Scholarly Publishing in Scholarly Publishing in Canada: Evolving Present, Uncertain Future", University of Ottawa Press 1988. In addition Professor Lown presented papers to the annual conferences of the Calgary Teachers Convention, Alberta Library and Trustees Association, the Canadian Association of Law Librarians, the Association of Municipal

Administrators of Northwest Territories and presented the opening speech to the Glenrose Hospital Research Week.

LEGISLATIVE IMPLEMENTATION OF INSTITUTE REPORTS

In our 1987-88 Annual Report, it was noted that the Institute was an advisory body only, and that the final decision as to enactment of Institute proposals lay with the government of the day. The Institute remains concerned that its proposals, which it believes to be the products of substantial research, public consultation, and to reflect a widespread consensus, be moved forward into legislation. Steps have been taken to ensure that the proposals are made widely known to the legal community, and the practice of adding draft legislation to final reports demonstrates that the report is viable legislation. The Institute is actively and cooperatively seeking methods to deal with the backlog of unenacted recommendations.

M.B. BIELBY
E.E. DAIS
C.W. DALTON
J.L. FOSTER
A.D. HUNTER
W.H. HURLBURT
H.J.L. IRWIN
D.P. JONES
P.J.M. LOWN
D.B. MASON
J.P. MEEKISON
B.L. RAWLINS
A.C.L. SIMS
C.G. WATKINS

CHAIRMAN

DIRECTOR

March 31, 1989

APPENDIX A

LIST OF BOARD MEMBERS

Present Members

M.B. Bielby
Member at large - June 1986 to present

E.E. Dais
University of Calgary Faculty of Law nominee - November 1988 to present

C.W. Dalton
Attorney General's nominee - March 1984 to present

J.L. Foster, Q.C.
Member at large - April 1987 to present

Alan D. Hunter, Q.C.
Law Society nominee - October 1988 to present
Chairman - March 1989 to present

W.H. Hurlburt, Q.C.
Law Society nominee - November 1967 to January 1970
Member at large - February 1970 to January 1971
Law Society nominee and Chairman - February 1971 to December 1973
Member at large and Associate Director - January 1974 to August 1975
Director - September 1975 to March 31, 1986
Attorney General's nominee - October 1986 to present

H.J.L. Irwin
Member at large - June 1986 to present

D.P. Jones, Q.C.
University of Alberta Faculty of Law nominee - October 1986 to present

P.J.M. Lown
University of Alberta Faculty of Law nominee - January 1983 to February 1983
Director - April 1988 to present

Hon. Mr. Justice D.B. Mason
Member at large - February 1979 to September 1985, and March 1986 to present

J.P. Meekison
University of Alberta nominee (Vice-President (Academic)) August 1985 to present

Hon. Madam Justice B.L. Rawlins
Member at large - June 1986 to present

A.C.L. Sims
Member at large - June 1986 to present

C.G. Watkins
Member at large - March 1986 to present

Former Members

G.W. Acorn, Q.C.
Attorney General's nominee - November 1967 to January 1969

D. Trevor Anderson
University of Alberta Faculty of Law nominee - November 1967 to June 1971

J.W. Beames, Q.C. (deceased)
Member at large - August 1979 to March 1986
Law Society nominee and Chairman - March 1986 to July 1988

W.F. Bowker, Q.C., Director Emeritus
Director - January 1968 to August 1975
Member at large - September 1975 to December 1984

Margaret Donnelly
Attorney General's nominee - June 1976 to February 1979

C.R.B. Dunlop
University of Alberta Faculty of Law nominee - September 1981 to December 1982

G.C. Field, Q.C.
Member at large - April 1981 to May 1986

H.G. Field, Q.C.
Law Society nominee and Chairman - November 1967 to February 1971

R.P. Fraser, Q.C.
Member at large - June 1970 to January 1976
Law Society nominee - January 1976 to February 1979

Dean G.H.L. Fridman
Member at large (University of Alberta Faculty of Law) - February 1971 to June 1975

S.A. Fridman, Q.C.
Attorney General's nominee - November 1967 to November 1970

E.J.F. Gamache, Q.C.
Attorney General's nominee - February 1979 to February 1984

R.G. Hammond
Member at large - March 1985 to March 1986
Director - April 1986 to March 1988

J.E. Hart, Q.C.
Attorney General's nominee - November 1967 to January 1969

Wm. Henkel, Q.C.
Attorney General's nominee - December 1970 to June 1976

R.G. Hopp
University of Alberta Faculty of Law nominee - August 1979 to September 1981

Dr. M. Horowitz
University of Alberta nominee (Vice-President (Academic)) - July 1975 to July 1979

Constance D. Hunt
Member at large (University of Calgary Faculty of Law) - July 1980 to June 1981

Dr. Henry Kreisel
University of Alberta nominee - (Vice-President (Academic)) - September 1970 to June 1975

F.A. Laux
University of Alberta Faculty of Law nominee - September 1972 to May 1976

L.C. Leitch
University of Alberta nominee (Vice-President (Finance and Administration)) - February 1980 to August 1985

J.C. Levy
University of Calgary Faculty of Law nominee - December 1981 to October 1988

Dr. A.G. McCalla
University of Alberta nominee (Vice-President (Academic)) - November 1969 to May 1970

Dean J.P.S. McLaren
Member at large (University of Calgary Faculty of Law) - January 1976 to June 1980

T.W. Mapp
Member at large - April 1981 to May 1986

Robert R. Neve (deceased)
Member at large - April 1970 to May 1970

R.S. Nozick
University of Alberta Faculty of Law nominee - March 1983 to May 1986

J.S. Palmer
Law Society nominee - November 1967 to February 1970

R.M. Paton
Attorney General's nominee - May 1982 to June 1985

Julien D. Payne
University of Alberta Faculty of Law nominee - July 1971 to June 1972

Ellen Picard
Member at large - June 1975 to December 1975
University of Alberta Faculty of Law nominee - May 1976 to July 1979

Margaret A. Shone
Member at large - May 1985 to May 1986

Justice W.A. Stevenson
University of Alberta Faculty of Law nominee - August 1969 to January 1970
Member at large - February 1970 to December 1973
Law Society nominee and Chairman - January 1974 to January 1976
Member at large and Chairman - January 1976 to July 1979

Dr. A.R. Thompson
University of Alberta Faculty of Law nominee - November 1967 to June 1969

W.E. Wilson, Q.C.
Law Society nominee - June 1976 to March 1986
Chairman - September 1979 to March 1986

Dr. Max Wyman
University of Alberta nominee (Vice-President (Academic)) - November 1967 to March 1969

APPENDIX B

RECORD OF LEGISLATION BASED ON INSTITUTE'S RECOMMENDATIONS

Formal Report - Number and Title		Legislation
No. 1	Compensation for Victims of Crime (1968)	Criminal Injuries Compensation Act, R.S.A. 1970, c. 75 (now R.S.A. 1980, c. C-33, am. by S.A. 1982, c. 14)
No. 2	Powers of Personal Representatives to Grant Options (June 1969)	Wills Act, R.S.A. 1970, c. 393, s. 30 (now R.S.A. 1980, c. W-11, s. 30) Devolution of Real Property Act, R.S.A. 1970, c. 109, s. 13 (now R.S.A. 1980, c. D-34, s. 12)
No. 3	Occupiers' Liability (December 1969)	Occupiers' Liability Act, S.A. 1973, c. 79 (now R.S.A. 1980, c. O-3)
No. 4	Age of Majority (January 1970)	Age of Majority Act, S.A. 1971, c. 1 (now R.S.A. 1980, c. A-4)
No. 5	Guarantees Acknowledgment Act, R.S.A. 1970, c. 173 (October 1970)	Principal recommendation for retention of Guarantees Acknowledgment Act (now R.S.A. 1980, c. G-12) accepted. Recommendations for incidental amendments not acted upon.
No. 6	Rule Against Perpetuities (August 1971)	Perpetuities Act, S.A. 1972, c. 131 (now R.S.A. 1980, c. P-4)
No. 7	Joinder of Divorce Proceedings with other Causes of Action (August 1971)	Alberta Rules of Court, Rule 563(3), Alta. Reg. 315/71
No. 8	Assignment of Wages (October 1971)	Wage Assignments Act, S.A. 1972, c. 61 (now R.S.A. 1980, c. W-1)
No. 9	Rule in *Saunders v. Vautier* (February 1972)	S.A. 1973, c. 13, s. 12 amending the Trustee Act, R.S.A. 1970, c. 373, s. 37 (now R.S.A. 1980, c. T-10, s. 42)

No. 10	Powers of Maintenance and Advancement (June 1972)	S.A. 1974, c. 65, s. 9 amending the Trustee Act, R.S.A. 1970, c. 373, ss. 31-33 (now R.S.A. 1980, c. T-10, ss. 32, 34, 35, 36(3), 37)
No. 11	Common Promisor and Promisee: Conveyances with a Common Party (October 1972)	Common Parties Contracts and Conveyances Act, S.A. 1974, c. 20 amended 1975, c. 5 (2 sess.) (now Law of Property Act, R.S.A. 1980, c. L-8, ss. 10-13; Land Titles Act, R.S.A. 1980, c. L-5, ss. 71, 72, 119)
No. 12	Expropriation (March 1973)	Expropriation Act, S.A. 1974, c. 27 (now R.S.A. 1980, c. E-16)
No. 13	Judicature Act, Section 24 (August 1974)	S.A. 1974, c. 65, s. 9 striking out s. 24 of the Judicature Act, R.S.A. 1970, c. 193
No. 14	Minors' Contracts (January 1975)	
No. 15	Validity of Rules of Court (December 1974)	S.A. 1976, c. 58, s. 6(4) amending the Judicature Act, R.S.A. 1970, c. 193, s. 39 (now R.S.A. 1980, c. J-1, s. 47)
No. 16	Rule in *Hollington v. Hewthorn* (February 1975)	S.A. 1976, c. 57, s. 1 amending the Alberta Evidence Act, R.S.A. 1970, c. 127, s. 27 (now R.S.A. 1980, c. A-21, s. 27)
No. 17	Small Projects (June 1975)	S.A. 1976, c. 55, s. 2 amending the Workers' Compensation Act, S.A. 1973, c. 87, s. 15 (now R.S.A. 1980, c. W-15, s. 15); S.A. 1976, c. 58, s. 3 amending the Bulk Sales Act, R.S.A. 1970, c. 37 (now R.S.A. 1980, c. B-13, ss. 1(f), (j), 4(2), 6(b), 7, 14)
No. 18	Matrimonial Property (August 1975)	Matrimonial Property Act, S.A. 1978, c. 22 (now R.S.A. 1980, c. M-9), enacting a combination of the majority and minority proposals for the distribution of matrimonial property, and an extension of the recommendations on possession of the matrimonial home
No. 19	Consent of Minors to Health Care (December 1975)	

No. 20	Status of Children (June 1976)	
No. 21	Purchase by a Company of Shares Which It Has Issues (January 1977)	S.A. 1977, c. 13, s. 2 amending the Companies Act, R.S.A. 1970, c. 60, s. 41 (reenacted as R.S.A. 1980, c. C-20, ss. 42-49, 51-54, then superseded by S.A. 1981, c. B-15, ss. 32 and 33: see Report No. 36)
No. 22	Residential Tenancies (February 1977)	Landlord and Tenant Act, 1979, S.A. 1979, c. 17 (now R.S.A. 1980, c. L-6), based in large part on our recommendations
No. 23	Partition and Sale (March 1977)	Partition and Sale Act, S.A. 1979, c. 59 (now Law of Property Act, R.S.A. 1980, c. L-8, ss. 14-19, 20-34)
No. 24	Survival of Actions and Fatal Accidents Act Amendment (April 1977)	Survival of Actions Act, S.A. 1978, c. 35 (now R.S.A. 1980, c. S-30; Fatal Accidents Act R.S.A. 1980, c. F-5, ss. 5(2)(a), (b), 8; and Limitation of Actions Act, R.S.A. 1980, c. L-5, s. 53)
No. 25	Family Law Administration: the Unified Family Court (April 1978)	
No. 26	Family Law Administration: Court Services (April 1978)	Some recommendations carried out by administrative action.

No. 27	Matrimonial Support (March 1978)	S.A. 1977, c. 64 amending Part 4 of the Domestic Relations Act, R.S.A. 1970, c. 113 (now covered by the Maintenance Enforcement Act, S.A. 1985, c. M-0.5, establishing a collection service for support orders which is generally consistent with though different in detail from our recommendations, and providing improved collection procedures which are similar to but in several particulars more stringent than our proposals); S.A. 1977, c. 92 amending the Social Development Act, R.S.A. 1970, c. 345 (now R.S.A. 1980, c. S-16, ss. 14, 15); S.A. 1978, c. 49, s. 2 amending the Debtors' Assistance Act, R.S.A. 1970, c. 86 (now R.S.A. 1980, c. D-5, ss. 3(2), 3(3), 4(e)-(f), (6) (Our proposals for change in the substantive law have not yet been implemented.)
No. 28	Tenancies of Mobile Home Sites (April 1978)	Mobile Home Sites Tenancies Act, S.A. 1982, c. M-18.5
No. 29	Family Relief (June 1978)	
No. 30	The Builders' Lien Act: Certain Specific Problems (March 1979)	S.A. 1985, c. 14 amending the Builders' Lien Act, R.S.A. 1980, c. B-12
No. 31	Contributory Negligence and Concurrent Wrongdoers (April 1979)	
No. 32	Guest Passenger legislation (April 1979)	Proclamation 5 July 1979 of previously enacted S.A. 1977, c. 76, s. 6 to come into force 1 September 1979 (now Insurance Act, R.S.A. 1980, c. I-5, s. 310) (This is not the principal recommendation of the Report.)
No. 33	Inter-Spousal Tort Immunity (April 1979)	
No. 34	Service of Documents During Postal Interruptions (June 1979)	S.A. 1980, c. 88 (now Judicature Act, R.S.A. 1980, c. J-1, ss. 33-37)

No. 35	Defamation: Fair Comment and Letters to the Editor (October 1979)	S.A. 1980, c. 11 amending the Defamation Act, R.S.A. 1970, c. 87 (now R.S.A. 1980, c. D-6, s. 9)
No. 36	Proposals for a New Alberta Business Corporations Act (August 1980), 2 vols.	Business Corporations Act, S.A. 1981, c. B-15
No. 37A	The Uniform Evidence Act 1981: A Basis for Uniform Evidence Legislation (June 1982)	
No. 37B	Evidence and Related Subjects: Specific Proposals for Alberta Legislation (June 1982)	
No. 38	The Uniform Sale of Goods Act (October 1982)	
No. 39	Defences to Provincial Charges (March 1984)	
No. 40	Judicial Review of Administrative Action: Application for Judicial Review (March 1984)	Court of Queen's Bench Amendment Act, 1987, S.A. 1987, c. 17
No. 41	Compensation for Security Interests in Expropriated Land (May 1984)	
No. 42	Debt Collection Practices (June 1984)	
No. 43	Protection of Children's Interests in Custody Disputes (October 1984)	
No. 44	Statute of Frauds (June 1985)	
No. 45	Status of Children: Revised Report, 1985 (November 1985)	

No. 46	Trade Secrets (July 1986)	Draft statute adopted by Uniform Law Conference of Canada, Victoria, B.C., August 1987
No. 47	Survivorship (August 1986)	
No. 48	Matrimonial Property: Division of Pension Benefits Upon Marriage Breakdown (June 1986)	
No. 49	Proposals for a New Alberta Incorporated Associations Act (March 1987)	Bill 54 (Volunteer Incorporations Act) introduced into Alberta Legislature, June 15, 1987
No. 50	Prejudgment Remedies for Unsecured Claimants (February 1988)	
No. 51	Proposals for a New Alberta Arbitration Act (October 1988)	
No. 52	Competence and Human Reproduction (February 1989)	

APPENDIX C

OTHER PUBLICATIONS

Annual Reports

Five Year Report 1968-1973

Annual Reports 1973-1974 to 1987-1988 inclusive

Reports for Discussion

No. 1	Protection of Trade Secrets (February 1984)
No. 2	Matrimonial Property: Division of Pension Benefits upon Marriage Breakdown (May 1985)
No. 3	Remedies of Unsecured Creditors (May 1986)
No. 4	Limitations (September 1986)
No. 5	Financial Assistance by a Corporation: Section 42, The Business Corporations Act (Alberta) (August 1987)
No. 6	Sterilization Decisions: Minors and Mentally Incompetent Adults (March 1988)

Issues Papers

No. 1	Towards a New Arbitration Act for Alberta (July 1987)
No. 2	Towards Reform of the Law Relating to Cohabitation Outside Marriage (October 1987)

Research Papers

No. 1	Rent Control; Security of Tenures (November 1975)
No. 2	Entry of Landlord; Locks and Security Devices (November 1975)
No. 3	Obligation to Repair; Security Deposits (November 1975)
No. 4	Termination Procedures; Failure of Tenants to Pay Rent; Overholding Tenants (November 1975)
No. 6	Resolution of Disputes; Landlord and Tenant (Advisory) Boards; Distress (November 1975)
No. 7	Contract or Property Law; Form and Delivery of Lease; Right to Assign or Sublet (November 1975)
No. 8	Mobile Homes (November 1975)
No. 9	Consent of Minors to Medical Treatment (May 1975)

No. 10	Illegitimacy (June 1974)
No. 11	Administration of Family Law: The Unified Family Court: Constitutional Opinions (May 1978)
No. 12	Statute of Frauds (May 1979)
No. 13	Matrimonial Support Failures: Reasons, Profiles and Perceptions of Individuals Involved (Canadian Institute for Research in the Behavioral and Social Sciences: May 1981)
No. 14	Conference Materials, International Invitational Conference on Matrimonial and Child Support, 27-30 May 1981 (October 1982)
No. 15	Survey of Adult Living Arrangements: A Technical Report (November 1984)
No. 16	The Operation of the Unsecured Creditors' Remedies System in Alberta (March 1986)
No. 17	Corporate Directors' Liability (February 1989)

Books

Sir Victor Windeyer, *Some Aspects of Australian Constitutional Law* (1972)

Thomas W. Mapp, *Torrens' Elusive Title: Basic Legal Principles of an Efficient Torrens' System* (1978) (Alta. L.R. Book Series, v. 1)

The Alberta Limitations Manual, Butterworths & Co. (Western Canada) Ltd., 1979. (Although not prepared by the Institute, the Manual was based upon a list of statutory limitation periods in Alberta originally prepared by members of the Institute's legal staff.)

Olive M. Stone, *The Child's Voice in the Court of Law*, Butterworth & Co. (Canada) Ltd., 1982. (Dr. Stone's book is based on work done for the Institute while she was employed full-time as consultant on our Family Law Project).

W.H. Hurlburt, *Law Reform Commissions in the United Kingdom, Australia and Canada*. Juriliber Limited, 1986.